IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Kanhaiyalal & Anr. v. Joint Registrar, Rajasthan Cooperative Societies, Jodhpur & Anr.

S.B.CIVIL WRIT PETITION NO.5402/1993
under Article 226 of the Constitution of India.

Date of Order : 3rd January, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Vijay Mehta, for the petitioners.
Mr. B.R.Mehta, for the respondents.

BY THE COURT :

This petition for writ is directed against the order dated 26.8.1993 passed by Joint Registrar, Cooperative Societies, Jodhpur in case No.69/91-92 and against the order dated 11.5.1993 passed by the Joint Registrar, Cooperative Societies, Jodhpur in the same case.

The facts in brief are that the petitioners No.1 and 2 were served with notices under Section 74 (1) of the Rajasthan Cooperative Societies Act, 1965 (hereinafter referred to as “the Act of 1965”) on 30.6.1988. The notice dated 30.6.1988 under Section 74

(1) of the Act of 1965 was given to the petitioner No.1 for certain acts and omissions on his part during the period commencing from 28.5.1974 to 20.2.1982. The notice of same nature dated 30.6.1988 was given to the petitioner No.2 for certain acts and omissions on his part during the period commencing from 7.12.1977 to 20.2.1982. On receiving the notices referred above the petitioners by submitting representation to the Joint Registrar, Cooperative Societies, Jodhpur raised preliminary objection with regard to competence of proceedings under Section 74(1) of the Act of 1965 being barred by limitation.

The petitioners contended that the proceedings under Section 74(1) of the Act of 1965 could be initiated within the period of six years from the date of any act or omission referred under Section 74. The objection made by the petitioners was over-ruled by the Joint Registrar, Cooperative Societies, Jodhpur by the order impugned on the count that under a notification dated 27.3.1991 an amendment was introduced under Section 74 of the Act of 1965 by virtue of it the limitation of six years starts from the date of knowledge and not from the date of the act or omission. Being aggrieved by the orders impugned present petition for writ is preferred by the petitioners.

Heard counsel for the parties.

As stated in preceding paras the notice under Section 74(1) of the Act of 1965 was issued by the Joint Registrar, Cooperative Societies on 30.6.1988 for the acts and omissions which were admittedly took place prior to the period of six years from the date of issuance of the notice. Prior to amendment under Section 74 of the Act of 1965 vide the notification dated 27.3.1991 the limitation prescribed for initiating proceedings under Section 74(1) of the Act of 1965 was of six years from the date of any act or omission referred in Section 74(1). The proviso to sub-section (1) of Section 74 of the Act of 1965 which prescribe the limitation as aforesaid reads as under:-

> "Provided that no such inquiry shall be held after the expiry of six years from the date of any act or omission referred to in this sub-section."

The amendment was introduced in the Act of 1965 on 27th day of March, 1991 and after amendment the proviso to sub-section (1) of Section 74 of the Act of 1965 reads as under:-

> "Provided that no such inquiry shall be held after the expiry of six years from the date of any act or omission referred to in this sub-section [or as the case may, from the date of knowledge of the Registrar of such act or omission, whichever is later]."

The amendment aforesaid was made on 27.3.1991. The term of six years from the date of the act or omission on part of the petitioners stood expire quite earlier to it as the acts and omissions pertaining to the petitioner No.1 were for the period commencing from 28.5.1974 to 20.2.1982 and for the petitioner No.2 were for the period commencing from 7.12.1977 to 20.2.1982. On the day the period of six years expired the amendment under the Act of 1965 was not introduced. The case of the petitioner, therefore, is required to be dealt with in accordance with the provisions existing prior to amendment made by notification dated 27.3.1991. In no event the case of the petitioners could have been dealt with in accordance with the amended provisions as on the day the period of six years already lapsed, from the date of act or omission on part of the petitioner took place.

Accordingly the proceedings initiated against the petitioner under Section 74(1) of the Act of 1965 are not competent. The writ petition, therefore, is allowed. The proceedings against the petitioners under Section 74(1) of the Act of 1965 by the notice impugned dated 30.6.1988 are hereby quashed.

(GOVIND MATHUR),J.

kkm/ps.